IN THE SUPREME COURT OF FLORIDA

EDWARD M. CHADBOURNE, INC.,

Defendant/Petitioner,

vs.

DOCKET NO. 66,413

ALGIE F. VAUGHN, as Personal Representative of the Estate of MARY EMMA VAUGHN, and ALGIE F. VAUGHN, Individually,

Plaintiff/Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT

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ARGUMENT

I.

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THIS CASE IN NO WAY CONFLICTS WITH THE DECISIONS OF THE SECOND AND THIRD DISTRICT COURTS OF APPEAL IN THE CASES OF NEUMANN v. DAVIS WATER AND WASTE, INC., 433 So.2d 559 (Fla. 2 DCA 1983) and ALVAREZ v. DeAGUIRRE, 395 So.2d 213 (Fla. 3 DCA 1981).

The decision sought to be reviewed herein holds that Section 402(A), Restatement of Torts (Second), applies to the manufacturer of building materials. The discretionary jurisdiction of this court can only be invoked when decisions conflict, not when opinions or reasons conflict. Gibson v. Maloney, 231 So.2d 823 (Fla. 1970). The decision in the instant case in no way conflicts with the decisions in Neumann and Alvarez, because neither of those cases deal with a manufacturer of building materials. They both deal with defendants who constructed improvements to real estate. Indeed, the opinion in Alvarez clearly states that the supplier of the defective building material (the electrical circuit box) was not even involved in that decision. Specifically, neither Neumann nor Alvarez deals in any way with the application of strict liability principles to the manufacturer of building materials. Accordingly, the decision of the First District Court of Appeal does not either expressly or directly conflict with Neumann v. Davis Water and Waste, Inc., or Alvarez v. DeAguirre.

II.

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL DOES NOT CONFLICT WITH THE DECISION OF THIS COURT IN SLAVIN v. KAY, 108 So.2d 462

(Fla. 1959), NOR DOES IT CONFLICT WITH ECHOLS v. HAMMETT COMPANY, INC., 423 So.2d 923 (Fla. 4 DCA 1982).

Slavin v. Kay and Echols v. Hammett Company, Inc., "expressly" deal solely with causation issues in the context of "contractors/possessors", and those decisions have absolutely nothing to do with the liability of a manufacturer of the defective product. See, Gross v. Asphault Material and Paving Co., Inc., 382 So.2d 854 (Fla. 3 DCA 1980). In other words, Slavin and its progeny deal only with builders of structural improvements to real property. Neither Slavin nor one single case which follows Slavin in any way even inferentially deals with the potential liability of a defendant who has manufactured a defective building material, and none of them come close to expressly addressing that issue. Because the decision of the First District Court of Appeal sought to be reviewed hereby deals solely with causation issues in the context of "manufacturers", the decision of the First District Court of Appeal in the instant case certainly does not conflict with Slavin or any other case applying the principles enunciated therein.

III.

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL DOES NOT EITHER EXPRESSLY OR DIRECTLY CONFLICT WITH THE OPINION OF THIS COURT IN CONE v. INTER COUNTY TELEPHONE & TELEGRAPH CO., 40 So.2d 148 (Fla. 1949), OR ITS PROGENY.

The decision in Cone v. Inter County Telephone & Telegraph Co., deals solely with foreseeability issues, while the decision of the First District Court of Appeal in the instant case does not even inferentially deal with foreseeability issues and certainly does not do so expressly. Cone does not even intimate that the subsequent negligence of some third party is an independent intervening cause. What the instant case did hold was that the causation principles enunciated by this Court in Auburn Machine Works, Co. v. Jones, 366 So.2d 1167 (Fla. 1979) were the causation principles to be followed in the trial of this cause. Neither the instant case nor Auburn Machine Works in any way conflict with Cone v. Inter County Telephone & Telegraph Co.

IV.

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL BELOW DOES NOT DIRECTLY AND EXPRESSLY CONFLICT WITH THE OPINION OF THIS COURT IN WEST v. CATERPILLAR TRACTOR COMPANY, INC., 336 So.2d 80 (Fla. 1976).

The decision in West v. Caterpillar Tractor Company, Inc., held that the strict liability principles set forth in Section 402(A) of the Restatement of Torts (Second) applied to product liability cases in Florida. Section 402(A) of the Restatement of Torts (Second) contains none of the language relied upon by petitioner relating to inspection for defects following the manufacture of the product. Hardin v. Montgomery Elevator Co., 435 So.2d 331 (Fla. 1 DCA 1983). The decision of the

First District Court of Appeal in the instant case, therefore, neither directly nor expressly conflicts with this Court's decision in West v. Caterpillar.

CONCLUSION

For the foregoing reasons, the Petition for Review should be be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Millard L. Fretland, Esquire, 715 South Palafox Street, Pensacola, Florida 32501, by hand delivery this 13th day of February, 1985.

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